

Securities and Exchange Commission

§ 240.3b-12

(ii) The bank's personnel do not receive, directly or indirectly, transaction-related compensation or compensation based upon the number of accounts choosing to use the registered broker-dealer; and

(iii) The brokerage services are provided by the broker-dealer on a basis in which all customers are fully disclosed; or

(3) Deals in or underwrites securities.

(b) This rule shall not apply to any bank that engages in one or more of the following activities only:

(1) Effects transactions in exempted or municipal securities as defined in the Act or in commercial paper, bankers' acceptances or commercial bills;

(2) Effects no more than 1,000 transactions each year in securities other than exempted or municipal securities as defined in the Act or in commercial paper, bankers' acceptances or commercial bills;

(3) Effects transactions for the investment portfolio of affiliated companies;

(4) Effects transactions as part of a program for the investment or reinvestment of bank deposit funds into any no-load open-end investment company registered pursuant to the Investment Company Act of 1940 that attempts to maintain a constant net asset value per share or has an investment policy calling for investment of at least 80% of its assets in debt securities maturing in thirteen months or less;

(5) Effects transactions as part of any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment or similar plan for employees or shareholders of an issuer or its subsidiaries;

(6) Effects transactions pursuant to sections 3(b), 4(2) and 4(6) of the Securities Act of 1933 and the rules and regulations thereunder; or

(7) Is subject to section 15(e) of the Act.

(c) The Commission, upon written request, or upon its own motion, may exempt a bank, either unconditionally or on specific terms and conditions, where the Commission determines that the bank's activities are not within the in-

tended meaning and purpose of this rule.

(d) For purposes of this section, the term *transaction-related compensation* shall mean monetary profit to the bank in excess of cost recovery for providing brokerage execution services.

[50 FR 28394, July 12, 1985]

§ 240.3b-10 [Reserved]

§ 240.3b-11 Definitions relating to limited partnership roll-up transactions for purposes of sections 6(b)(9), 14(h) and 15A(b)(12)-(13).

For purposes of sections 6(b)(9), 14(h) and 15A(b)(12)-(13) of the Act (15 U.S.C. 78f(b)(9), 78n(h) and 78o-3(b)(12)-(13)):

(a) The term *limited partnership roll-up transaction* does not include a transaction involving only entities that are not "finite-life" as defined in Item 901(b)(2) of Regulation S-K (§ 229.901(b)(2) of this chapter).

(b) The term *limited partnership roll-up transaction* does not include a transaction involving only entities registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) or any Business Development Company as defined in section 2(a)(48) of that Act (15 U.S.C. 80a-2(a)(48)).

(c) The term *regularly traded* shall be defined as in Item 901(c)(2)(v)(C) of Regulation S-K (§ 229.901(c)(2)(v)(C) of this chapter).

[59 FR 63684, Dec. 8, 1994]

§ 240.3b-12 Definition of OTC derivatives dealer.

The term *OTC derivatives dealer* means any dealer that is affiliated with a registered broker or dealer (other than an OTC derivatives dealer), and whose securities activities:

(a) Are limited to:

(1) Engaging in dealer activities in eligible OTC derivative instruments that are securities;

(2) Issuing and reacquiring securities that are issued by the dealer, including warrants on securities, hybrid securities, and structured notes;

(3) Engaging in cash management securities activities;

(4) Engaging in ancillary portfolio management securities activities; and